

**STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION ON CIVIL RIGHTS
DCR DOCKET NO. EV19WB-65422**

Laquanda Scott,)
)
 Complainant,)
)
 v.)
)
 Premium Marketing Group,)
 Inc., dba Premium Marketing)
 and Nady Abraham,)
 Individually,)

**Administrative Action
PARTIAL FINDING OF PROBABLE
CAUSE**

Respondents.

On July 2, 2015, Laquanda Scott (Complainant) filed a verified complaint with the New Jersey Division on Civil Rights (DCR) alleging that her former employer, Premium Marketing (Respondent), subjected her to a sexually hostile work environment, and that such a hostile work environment resulted in working conditions so intolerable that it resulted in a constructive discharge from her employment, in violation of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to -49. The DCR investigation found as follows.

Summary of the Investigation

At the time the verified complaint was filed, Respondent Premium Marketing was the trade name of Premium Marketing Group, Inc., a business located in Union that provided graduation products, school photography and printing services to schools throughout New Jersey, New York and Connecticut. Premium Marketing Group, Inc. was owned by Nady Abraham. During the course of the investigation Abraham sold the business. Following the sale, the business changed its name to Premium One Stop Grad, and is now located in Mountainside.¹

In May 2015, Respondent hired Complainant to work in its warehouse for the graduation season as a temporary worker. Complainant alleged in her complaint that shortly after being hired she was subjected to sexual harassment by then-owner Nady Abraham, and that such harassment resulted in her constructive discharge from employment on June 22, 2015. Abraham denied that

¹ DCR attempted to obtain information concerning the sale of the business but was unable to do so. However, it is clear that the discriminatory conduct in this matter emanated from Abraham, who was the owner of Premium Marketing Group, Inc. at the time the conduct occurred. Abraham was served with the verified complaint and participated in the investigation. Based on what was learned during the investigation, the verified complaint is amended to reflect who is believed to be the responsible parties for the alleged discriminatory conduct. See N.J.A.C. 13:4-2.9.

he engaged in sexually harassing conduct toward Complainant, and told DCR that he never made sexually explicit comments or gestures to Complainant or to any of his female staff. He told DCR that Complainant never made a discrimination complaint against him and left her temporary position at the end of graduation season.

Complainant told DCR that her employment responsibilities included packing caps and gowns and resizing graduation items. Complainant said she also worked in an area where T-shirts were sorted. Complainant could not recall the exact day when Abraham's sexual conduct began, but told DCR that she marked the occurrence in her mind by a change in her work duties, specifically when she was sent to work in Respondent's T-shirt area. Complainant told DCR that Respondent's T-shirt area was closer to Mr. Abraham's office, so she estimated it to be in her third or fourth week of employment.

Complainant told DCR that when she performed her work in that area of the store, Mr. Abraham would appear "often," almost "out of the blue," and say things like "bend over, I like your ass" or "let's go upstairs and make a baby." Complainant told DCR that she confronted Mr. Abraham about the comments, but "he would just walked away." She told DCR that during her last three weeks at the company, the harassment occurred every time she saw Mr. Abraham, which she told DCR was "often." Complainant told DCR that on her last day of work someone in management sent her home and told her "the work is done" and "we'll call you if we need you." Complainant said that she found out later from a coworker that there might still have been work for her to do, but decided she did not want to try to go back due to Abraham's harassment.

DCR interviewed former co-worker [REDACTED], who worked in close proximity to Complainant in the area of yearbook and diploma design. [REDACTED] was employed by Respondent from January to July of 2015. He corroborated Complainant's allegations of Mr. Abraham's sexually inappropriate conduct towards her and told DCR that Abraham would also touch Complainant's buttocks. [REDACTED] told DCR, "The owner used to say [to Complainant] let's make a baby, would touch her butt and would want to go upstairs and have sex."

[REDACTED] told DCR that he witnessed Abraham making sexually explicit statements to Complainant on a daily basis. "The first time I heard him say something like that, I thought it was wrong to talk to a young lady like that," said [REDACTED] "It's a job environment and that shouldn't be allowed, especially by the owner." "I knew I wasn't going to be in that environment too long," he continued. "I felt like I wanted to tell him that he was really disrespectful [REDACTED] said Complainant resigned about a month before he left and he was not surprised. He said he thought she would have left sooner. "I thought a man of his age would not say those things," he recalled. "He (Abraham) would laugh and we all knew he was serious. He thought it was funny the whole time." [REDACTED] also told DCR that he recalled that other female employees voiced concerns about Abraham and his sexually inappropriate comments and advances as well.

DCR also interviewed Respondent's employees [REDACTED], who both worked with Complainant. Both told DCR that they never personally witnessed Abraham engaging in sexually harassing conduct towards Complainant. "I never saw him harass her at all. She never came to me about Nady. I didn't know she was being harassed, I didn't know about it until she came to you guys," [REDACTED] told DCR. [REDACTED] told DCR that that Complainant never

complained to him about Abraham's alleged sexual harassment. However, both men told DCR that they had witnessed Mr. Abraham engaging in sexually inappropriate conduct with other female staff. [REDACTED] characterized Mr. Abraham as "inappropriate" when it came to female employees, "He said inappropriate things." Both [REDACTED] stated they did not confront Abraham about his sexually inappropriate conduct because he was their boss. They both told DCR that his demeaning and harassing treatment of female workers was "constant."

DCR interviewed Nady Abraham. Abraham said that he remembered Complainant as a temporary employee who left at the end the graduation season. But he denied sexually harassing her and stated he was "100 percent sure she never came to me and complained." Abraham said his ex-wife, who was office manager, never reported to him any complaints from Complainant about him.

Analysis

At the conclusion of an investigation, the DCR Director is required to determine whether "probable cause exists to credit the allegations of the verified complaint." N.J.A.C. 13:4-10.2(a). "Probable cause" for purposes of this analysis means a "reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person in the belief that the [LAD] has been violated." N.J.A.C. 13:4-10.2(b). If DCR determines that probable cause exists, then the complaint will proceed to a hearing on the merits. N.J.A.C. 13:4-11.1(b). However, if DCR finds there is no probable cause, then that determination is deemed to be a final agency order subject to review by the Appellate Division of the Superior Court of New Jersey. N.J.A.C. 13:4-10.2(e); R. 2:2-3(a)(2).

A finding of probable cause is not an adjudication on the merits. Instead, it is merely an initial "culling-out process" in which the Director makes a threshold determination of "whether the matter should be brought to a halt or proceed to the next step on the road to an adjudication on the merits." Frank v. Ivy Club, 228 N.J. Super. 40, 56 (App. Div. 1988), rev'd on other grounds, 120 N.J. 73 (1990), cert. den., 498 U.S. 1073. Thus, the "quantum of evidence required to establish probable cause is less than that required by a complainant in order to prevail on the merits." *Ibid.*

a. Hostile Work Environment

Sexual harassment in the workplace is a form of gender discrimination. See Lehman v. Toys 'R' Us, Inc., 132 N.J. 587, 607 (1993). To present a claim of hostile work environment due to sexual harassment, there must be evidence that the conduct occurred because of the employee's gender or was sexual in nature, and that a reasonable employee of the same gender would find the conduct severe or pervasive enough to alter the conditions of employment to make the working environment hostile or abusive. *Id.* at 603. The New Jersey Supreme Court has recognized that when the individual engaging in the sexually harassing conduct is also the employee's supervisor, as is the case here, the employee's dilemma is particularly "acute and insoluble" because she has "nowhere to turn." Taylor v. Metzger, 152 N.J. 490, 503-505 (1998).

Here, the DCR investigation found sufficient evidence to support a reasonable suspicion that Respondents subjected Complainant to a sexually hostile work environment. Complainant's

reports that Abraham, as her ultimate supervisor and owner of the company, subjected her to unwanted and consistent sexual conduct was corroborated by at least one of her co-workers. Both Complainant and her coworker report persistent sexually explicit statements by Abraham toward Complainant that took place over the course of at least one month. Moreover, the DCR investigation found that in addition to these comments Abraham also made inappropriate physical contact with Complainant on several occasions during the course of her employment. Other employees interviewed during the investigation said that while they did not specifically witness Abraham harass Complainant, they did witness Abraham often engaging in sexually inappropriate behavior with other female staff. Therefore, at this point in the DCR investigation, the Director finds sufficient evidence to support Complainant's hostile work environment claim.

b. Aiding and Abetting

N.J.S.A. 10:5-12(e) makes it unlawful “[f]or any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act, or to attempt to do so.” A supervisor may be liable under this provision when he actively harasses a subordinate employee. Mann v. Estate of Meyers, 61 F.Supp.3d 508, 529-30 (D.C.N.J. 2014). In this case, as the owner of the company and Complainant's supervisor, Abraham was responsible for ensuring Complainant's work environment was free from sexually hostile conduct. The investigation found that Abraham failed in this responsibility by actively harassing Complainant in the workplace. Under these circumstances, Abraham may be individually liable for his conduct under N.J.S.A. 10:5-12(e).

c. Constructive Discharge

Complainant also alleged that the hostile work environment to which she was subjected resulted in her constructive discharge from employment. A constructive discharge occurs under the LAD where an “employer knowingly permits conditions of discrimination in employment so intolerable that a reasonable person subjected to them would resign.” Muench v. Township of Haddon, 255 N.J. Super, 288, 302 (App. Div. 1992). Constructive discharge is a “heavily fact-driven determination,” id. at 302, that requires more egregious conduct than that sufficient for a hostile work environment claim and obligates an employee to do what is necessary and reasonable in order to remain employed. Shepherd v. Hunterdon Developmental Center, 174 N.J. 1, 28 (2002).

Here, the nature of the conduct by Abraham may satisfy the heightened standard for constructive discharge. However, it appears that it was the end of Complainant's temporary assignment that brought about the end of her employment, rather than a determination that the harassment forced her to leave an ongoing job. Complainant was hired on a temporary basis to work for a fixed period during the graduation season, and it appears that she worked until the end of that fixed period of employment. Under these circumstances, DCR cannot make a determination of constructive discharge.

Based on the investigation, DCR finds that there is **PROBABLE CAUSE** to credit Complainant's allegations of hostile work environment, as well as allegations that Abraham aided and abetted the hostile environment, and that this matter should “proceed to the next step on the

road to an adjudication on the merits” on these claims. Frank, 228 N.J. Super. at 56. DCR also finds that there is no probable cause to credit the allegations that Complainant was subjected to a constructive discharge due to the harassment.



Date: November 25, 2019

Rachel Wainer Apter, Director
NJ Division on Civil Rights